IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1341 OF 2005

IN

SUIT NO.1223 OF 2005

M/s.Mukta Construction & others. ...Plaintiffs.

vs.

Lilavanti C. Sanghvi & others. ...Defendants.

Mr.N.G.Thakkar i/b. Mahesh Jani & Co. for Plaintiffs.

Mr.Ranjit Shetty i/b. PDS Legal for Defendant nos. 1 to 5.

Ms.Sunita Mourya i/b. S.B.Amin, for Defendant no.6.

CORAM: D.K.DESHMUKH,J.

DATED: 14th September,2006.

P.C.:-

1. This is a notice of motion taken out by the plaintiffs. In the suit, the plaintiffs are praying basically for decree of specific performance of the agreement to sale the property which was entered into between the plaintiffs and Dr.Chhabildas Gokuldas Sanghvi of whom the defendant no.1 is the Widow and the defendant nos.2 to 6 are the sons and defendant no.7 is the daughter. The agreement is

dated 21st March,2003. The agreed consideration as per the agreement is Rs.54,00,000/- (Rupees Fifty Four lakhs only). Out of which Rs.18.,00,000/- (Rupees Eighteen lakhs only) were paid at the time of the agreement. Before the sale deed could be executed the said Chhabildas Gokaldas Sanghvi expired on 20.4.2003. Out of the legal representatives left behind by the deceased Chhabildas, defendant nos.1 to 5 are supporting the plaintiffs and are willing to execute a sale deed in favour of the plaintiffs. The defendant nos.6 and 7 are opposing. As a condition of ad-interim order, the plaintiffs have already deposited the balance amount of consideration in the Court. The property is a plot of land with a building standing thereon. The ground floor of the building is occupied by the tenants. The first floor is also occupied by the tenants. The second floor was occupied by the owner. Admittedly, the possession of the second floor has been delivered to the plaintiffs. Therefore, presently ground floor and the first floor are in possession of the tenants. Whereas the second floor is in possession of the plaintiffs.

2. The plaintiffs by this notice of motion claim an order of temporary injunction restraining the defendants from creating any third party rights in the property. He also claims injunction restraining the defendants from interfering with the possession and occupation of the suit property of the plaintiffs. The plaintiffs have also prayed for

temporary injunction restraining defendants from obstructing the plaintiffs from entering the settlement with the tenants and securing possession of the premises which are in possession of the tenants from the suit building.

3. So far as reliefs claimed by prayer clauses (a) and (b) are concerned namely restraining defendants from creating third party rights in the property and interfering with the possession of the plaintiffs of the suit property is concerned, in my opinion, in view of the fact that there is an agreement between the parties and the plaintiffs had paid substantial part of the price to Mr.Chhabildas and have deposited the balance amount of consideration in the Court, the plaintiff is entitled to interim order in terms of prayer clause (a) and (b). So far as prayer clause (d) is concerned, perusal of the agreement shows that in the agreement itself the plaintiffs have been given power to enter into the negotiations with the tenants and to receive possession of the premises from the tenant. As prima facie it appears that the plaintiffs have performed their part of the contract fully, in my opinion, there is no reason as to why the defendants should be obstructing the plaintiffs in acting in pursuance to the agreement.

4. Taking overall view of the matter therefore, the following order would meet the ends of justice:-

This notice of motion is granted in terms of prayer clause (a), (d) and (e). It is also granted in terms of prayer clause (b) excluding bracketed portion.

The learned Counsel appearing for plaintiffs states that he does not press relief claimed by prayer clause (c).